

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)
PARTNERS, COUNTRY MUSIC.)
TELEVISION, INC., PARAMOUNT)
PICTURES CORPORATION, and BLACK)
ENTERTAINMENT TELEVISION, LLC,)
)
Plaintiffs,)
)
vs.) NO. 07-CV-2203
)
YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)
)
Defendants.)
)

)
THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., et al.,)
on behalf of themselves and all)
others similarly situated,)
)
Plaintiffs,)
vs.) NO. 07-CV-3582
)
YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF ROELOF BOTHA
MENLO PARK, CALIFORNIA
WEDNESDAY, AUGUST 5, 2009

JOB NO. 17298

1 AUGUST 5, 2009

2 9:04 a.m.

3
4 VIDEOTAPED DEPOSITION OF ROELOF BOTHA,
5 SHEARMAN & STERLING LLP, 1080 Marsh Road,
6 Menlo Park, California, pursuant to notice, and
7 before me, ANDREA M. IGNACIO HOWARD, CLR, RPR,
8 CRR, CSR License No. 9830.
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A P P E A R A N C E S:

FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

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By: KIRSTEN NELSON CUNHA, Esq.

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FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

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FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and
GOOGLE, INC.:

WILSON SONSINI GOODRICH & ROSATI, LLP

By: DAVID H. KRAMER, Esq.

650 Page Mill Road

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A P P E A R A N C E S (Continued.)

FOR THE WITNESS ROELOF BOTHA:

DURIE TANGRI PAGE LEMLEY ROBERTS & KENT LLP

By: RAGESH K. TANGRI, Esq.

332 Pine Street, Suite 200

San Francisco, California 94104

(415) 362-6666 rtangri@durietangri.com

ALSO PRESENT: Lou Meadows, Videographer.

---oOo---

1 R. BOTHA

2 MENLO PARK, CALIFORNIA

3 AUGUST 5, 2009

4 9:04 a.m.

5

6 09:05:41

7 09:05:41 THE VIDEOGRAPHER: On the record.

8 09:05:44 This is today's videotaped deposition of

9 09:05:47 Roelof Botha, taken on August 5th, 2009, at Shearman &

10 09:05:54 Stearling, 1080 Marsh Road, Menlo Park, California.

11 09:05:59 In the matter of Viacom International vs. YouTube,

12 09:05:59 Inc., and The Football Association Premier League

13 09:06:07 Limited, et al., vs. YouTube, Inc., et al.

14 09:06:07 Case No. 07-CV-2103 and 07-CV-3582. In the

15 09:06:16 United States District Court in the Southern District

16 09:06:18 of New York.

17 09:06:19 My name is Lou Meadows, and I represent David

18 09:06:23 Feldman Worldwide, located at 600 Anton Boulevard,

19 09:06:29 Suite 1100, in Costa Mesa, California.

20 09:06:31 We are now commencing at 9:04 a.m.

21 09:06:34 Will all present please identify yourselves

22 09:06:35 and state whom you represent for the record.

23 09:06:35 MS. CUNHA: Kirsten Cunha from Shearman &

24 09:06:40 Stearling on behalf of the Viacom plaintiffs.

25 09:06:41 MR. GALDSTON: Benjamin Galdston of Bernstein,

1 R. BOTHA

2 09:06:41 Litowitz, Berger & Grossmann on behalf of the class

3 09:06:45 plaintiffs.

4 09:06:45 MR. KRAMER: I'm Dave Kramer from Wilson

5 09:06:49 Sonsini representing the defendants Google and

6 09:06:53 YouTube.

7 09:06:53 MR. TANGRI: Ragesh Tangri representing the

8 09:06:55 witness.

9 09:06:55 THE VIDEOGRAPHER: Thank you.

10 09:06:55 If there are no stipulations, the court

11 09:07:07 reporter may now administer the oath.

12

13 ROELOF BOTHA,

14 having been sworn as a witness,

15 testified as follows:

16

17

18 09:07:08 EXAMINATION BY MS. CUNHA

19 09:07:08 MS. CUNHA: Q. Good morning, Mr. Botha.

20 09:07:10 A Good morning.

21 09:07:11 Q Could you please state briefly your

22 09:07:13 educational background?

23 09:07:13 A Sure.

24 09:07:14 I completed an undergraduate degree at the

25 09:07:18 University of Cape Town and -- with majors in

1 R. BOTHA

2 09:08:20 please.

3 09:08:21 MR. TANGRI: Why don't we talk about this

4 09:08:22 off-line later. There are reasons he may not want to.

5 09:08:26 In any event, you can contact him through us, so...

6 09:08:28 MS. CUNHA: Q. Are you uncomfortable

7 09:08:30 providing your address on the record, Mr. Botha?

8 09:08:34 A I am.

9 09:08:34 Q How long have you lived at your current

10 09:08:36 address in Menlo Park?

11 09:08:37 A Three years.

12 09:08:40 Q What's your current work address?

13 09:08:42 A 3000 Sandhill Road.

14 09:08:46 Q What town?

15 09:08:47 A Menlo Park.

16 09:08:53 Q And are those the offices of some company or

17 09:08:56 firm?

18 09:08:56 A They are.

19 09:08:57 Q And what firm is that?

20 09:08:58 A They are a collection of different firms that

21 09:09:00 are located at this address, including the firm for

22 09:09:03 which I work, Sequoia Capital.

23 09:09:06 Q And how long have you worked for Sequoia

24 09:09:09 Capital?

25 09:09:10 A Since January 2003.

1 R. BOTHA

2 09:09:12 Q And what is your current -- what is your
3 09:09:14 current title at Sequoia Capital?

4 09:09:16 A Partner.

5 09:09:17 Q And how long have you been a partner at
6 09:09:19 Sequoia Capital?

7 09:09:20 A I don't know the precise date at which I
8 09:09:23 became a partner. I think it was approximately the
9 09:09:26 end of 2006, beginning of 2007.

10 09:09:30 Q Prior to becoming a partner, what was your
11 09:09:34 title at Sequoia Capital?

12 09:09:41 A The term of my title was associate.

13 09:09:43 Q And other than associate and partner, have
14 09:09:45 you held any other titles at Sequoia Capital?

15 09:09:48 A No.

16 09:09:48 Q Prior to joining Sequoia Capital, can you
17 09:09:50 give me a brief summary of your work history?

18 09:09:57 A Reverse chronologically?

19 09:09:59 Q Sure.

20 09:09:59 A After graduating from Stanford, I joined a
21 09:10:02 company called PayPal. I joined as a director of
22 09:10:06 corporate development. Became vice president of
23 09:10:08 finance and risk management. Became chief financial
24 09:10:11 officer of the company in September 2001, and stayed
25 09:10:18 at PayPal through the acquisition by eBay at the end

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R. BOTHA

10:05:06 2005, I was not aware of informal communication
10:05:09 between content owners and YouTube about unauthorized
10:05:13 use of copyright material on the service.

10:05:27 MS. CUNHA: Q. At the time of the meeting
10:05:28 with Ms. Kirkman, were you a member of the YouTube
10:05:33 board at that time, if you recall?

10:05:38 A Unfortunately, the -- all we have, in
10:05:42 Exhibit 2, is the scheduling of a meeting on Monday --
10:05:47 to be scheduled for Monday, October 3rd, 2005. I
10:05:54 don't recall whether the meeting actually took place
10:05:55 on that specific date, and I don't recall whether the
10:05:57 financing had actually technically closed as of that
10:06:00 date, so I cannot answer that truthfully, because I
10:06:04 just don't recall.

10:06:09 Q Ultimately, Sequoia did invest in YouTube;
10:06:12 correct?

10:06:14 A Yes, in the fourth quarter of 2005, Sequoia
10:06:18 did invest in YouTube.

10:06:19 Q And that was in the Series A financing?

10:06:22 A Yes, that was a Series A financing.

10:06:24 Q And how much did Sequoia invest?

10:06:28 A I don't recall --

10:06:30 MR. TANGRI: Objection; vague.

10:06:31 You can answer.

1 R. BOTHA

2 10:06:32 THE WITNESS: Okay.

3 10:06:33 I don't recall the specific aggregate

4 10:06:35 financing. I think it was in the order of

5 10:06:40 \$3.5 million.

6 10:06:40 MS. CUNHA: Q. And that was from the Sequoia

7 10:06:43 fund 11 and whatever other side-by-side funds that

8 10:06:47 were invested with fund 11; is that fair to say?

9 10:06:51 A That's correct --

10 10:06:52 MR. TANGRI: Objection.

11 10:06:52 Go ahead.

12 10:06:53 THE WITNESS: You're correct. The Series A

13 10:06:56 financing took place from the Sequoia 11 main fund and

14 10:06:59 associated side funds.

15 10:07:00 MS. CUNHA: Q. Did you have any personal --

16 10:07:02 strike that.

17 10:07:04 Did you make any personal investment in the

18 10:07:05 Series A financing?

19 10:07:07 A The way that our funds are structured at

20 10:07:11 Sequoia Capital, we have a partner fund that is a

21 10:07:15 side-by-side fund with every fund that we raise, and

22 10:07:18 as a matter of course, all partners are expected to

23 10:07:21 invest in every partner fund alongside every main

24 10:07:25 fund. So in that sense, whatever capital contribution

25 10:07:30 I made to the Sequoia 11 partner side fund, it would

1 R. BOTHA

2 11:09:37 MR. TANGRI: Objection; ambiguous.

3 11:09:38 THE WITNESS: Could you define what you mean

4 11:09:40 "working closely," too.

5 11:09:42 MS. CUNHA: Sure.

6 11:09:43 Q Would you --

7 11:09:43 THE WITNESS: That's too vague.

8 11:09:44 MS. CUNHA: Q. Would you go to their --

9 11:09:45 would you go to their offices on a regular basis?

10 11:09:47 A I would stop by the incubation space several

11 11:09:50 times a week.

12 11:09:53 Q Was the -- after they moved to the San Mateo

13 11:09:57 office, did you continue to stop by their offices on a

14 11:10:00 weekly basis?

15 11:10:01 A After they moved to San Mateo, I don't know

16 11:10:06 whether it was necessarily every single week, but I

17 11:10:10 frequently paid visits to the company, and/or Chad

18 11:10:14 Hurley stopped by Sequoia's office.

19 11:10:16 Q You became a member of the YouTube board; is

20 11:10:19 that correct?

21 11:10:24 A Correct. After the Series A financing

22 11:10:27 closed, I became a member of the board.

23 11:10:29 Q And is it fair to say that you were an active

24 11:10:33 board member?

25 11:10:34 MR. TANGRI: Objection; ambiguous.

1 R. BOTHA

2 A F T E R N O O N S E S S I O N

3 1:04 P.M.

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5 13:05:45

6 13:05:45 THE VIDEOGRAPHER: On the record.

7 13:06:02 The time is 1:04 p.m.

8 13:06:05 Please continue.

9 13:06:06 MS. CUNHA: Q. Did Sequoia ultimately invest

10 13:06:11 in more rounds -- strike that.

11 13:06:13 Did Sequoia ultimately invest in more than

12 13:06:15 one round of financing in YouTube?

13 13:06:17 A Sequoia Capital also invested in YouTube's

14 13:06:20 Series B financing in 2006.

15 13:06:25 Q And do you recall the amount of the Series B

16 13:06:28 investment that Sequoia made in YouTube?

17 13:06:33 A Let me think for a second.

18 13:06:35 Q And by "Sequoia," I mean --

19 13:06:37 A Sequoia Capital --

20 13:06:38 Q -- the fund and the side-by-side.

21 13:06:43 A Let me think for a second.

22 13:06:44 I think Sequoia Capital invested 5- to

23 13:06:52 \$6 million in the Series B financing. I don't recall

24 13:06:54 the precise number.

25 13:07:08 MS. CUNHA: Let's mark this as the next